



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and Members of the City Council
FROM: Carol J. Mitten, Public Works Director/City Administrator
Bradley M. Bennett, Interim Co-City Engineer
DATE: January 9, 2019
RE: Champaign-Urbana Mass Transit District Bus Shelter Master License Agreement

Action Requested

Approval of the attached ordinance entitled “AN ORDINANCE APPROVING A BUS SHELTER MASTER LICENSE AGREEMENT WITH THE CHAMPAIGN-URBANA MASS TRANSIT DISTRICT.”

Background and Facts

In Section 9-112.3 of the Illinois Highway Code, 605 ILCS 5/1-101 et seq., the Illinois General Assembly declares that bus shelters are for the convenience and comfort of persons waiting for buses or other public transportation and may be placed and maintained within municipalities, after a license or permit for the shelter and location is obtained from the authority having jurisdiction of the right-of-way.

The Urbana City Code regulates the use of City right-of-way by third parties, such as utilities, municipal units of government, property owners, and telecommunications companies, through license or franchise agreements. The license and franchise agreement conditions are protective of the City’s interests in public right-of-way (ROW) and, therefore, require conditions be met by the applicant before a license or franchise agreement is issued.

Historically, the Champaign-Urbana Mass Transit District (CUMTD) has installed bus pads and shelters on private property pursuant to lease agreements with private property owners as well as on public ROW. More recently, CUMTD has sought to install bus pads and shelters on certain locations within public ROW for the convenience and comfort of its passengers.

The Bus Shelter Master License Agreement will allow CUMTD to install bus shelters in the City’s public ROW, and the City will waive any associated fees with the ROW occupation. The agreement also waives the ROW bond requirement for new bus shelter construction. New bus shelter installations would be reviewed by the Public Works Director and administratively approved by the Mayor. Existing bus shelters would also be covered under the license agreement.

Key provisions of the license agreement include: (a) location maps of new and existing bus shelters; (b) review of plans and specifications by the Public Works Director for new bus shelters; (c) installation of sidewalk by CUMTD if none exists at new bus shelter locations; (d) CUMTD to maintain the shelters and

the ROW around the shelters; (e) the removal or relocation of a shelter when directed by the City; (f) indemnification; (g) insurance certificate; and (h) right of termination by either party.

CUMTD has executed or is in the process of executing bus shelter master license agreements with the City of Champaign and University of Illinois.

Financial Impact

The City presently charges an \$80 fee for ROW permits and an annual fee of \$0.85 per square-foot of ROW occupied. These two fees would be waived by the license agreement.

Recommendations

It is recommended that the City Council approve “AN ORDINANCE APPROVING A BUS SHELTER MASTER LICENSE AGREEMENT WITH THE CHAMPAIGN-URBANA MASS TRANSIT DISTRICT.”

Attachments: AN ORDINANCE APPROVING A BUS SHELTER MASTER LICENSE AGREEMENT WITH THE CHAMPAIGN-URBANA MASS TRANSIT DISTRICT
CHAMPAIGN- URBANA MASS TRANSIT DISTRICT BUS SHELTER MASTER LICENSE AGREEMENT (City of Urbana)

ORDINANCE NO. 2019-01-003

**AN ORDINANCE APPROVING A BUS SHELTER MASTER LICENSE AGREEMENT
WITH THE CHAMPAIGN-URBANA MASS TRANSIT DISTRICT**

WHEREAS, Illinois Highway Code Section 9-112.3 (605 ILCS 5/9-112.3) provides that shelters for the convenience and comfort of persons waiting for buses may be placed and maintained on any street or highway within a municipality, after a license or permit for the shelter and location is obtained from the highway authority having jurisdiction, subject to the approval of the corporate authorities of such municipality; and

WHEREAS, Urbana City Code Section 20-600(a) provides that the City Council, by ordinance, may authorize the Mayor to execute license agreements on behalf of the City of Urbana (“City”) for use of public rights-of-way for the placement or installation of any facility on the surface of or above the ground in a public right-of-way; and

WHEREAS, the Champaign-Urbana Mass Transit District (“MTD”) and the City desire to enter into a master license agreement to allow the MTD to maintain its existing bus shelters and install new bus shelters on City rights-of-way as herein provided; and

WHEREAS, the City Council, after due consideration, finds that approving a master license agreement with the MTD is in the best interests of the residents of the City and is desirable for the welfare of the City’s government and affairs.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

A Bus Shelter Master License Agreement between the Champaign-Urbana Mass Transit District and the City of Urbana, Illinois, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to

said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4.

This Ordinance shall be in full force and effect from and after its passage.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ____ day of _____, 2019.

AYES:

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, 2019.

Diane Wolfe Marlin, Mayor

CHAMPAIGN- URBANA MASS TRANSIT DISTRICT
BUS SHELTER MASTER LICENSE AGREEMENT

(City of Urbana)

THIS BUS SHELTER MASTER LICENSE AGREEMENT is being made and entered into by and between the CHAMPAIGN-URBANA MASS TRANSIT DISTRICT (“MTD”) and the CITY OF URBANA (“City”), each a “party” and together the “parties.”

WHEREAS, 605 ILCS 5/9-112.3 provides that bus shelters are for the convenience and comfort of persons waiting for buses or other public transportation and may be placed and maintained within the Right-of-Way of any street or highway, including Right-of-Way for streets and highways within municipalities, after a license or permit for the shelter and location is obtained from the authority having jurisdiction.

WHEREAS, the MTD has installed Bus Shelters, as defined in this Agreement, on Right-of-Way located within the jurisdiction and control of the City and proposes to install additional Bus Shelters.

WHEREAS, the locations of previously-installed Bus Shelters and the desired locations for additional Bus Shelters are depicted on the attached Site Maps, which may be updated from time to time by agreement of the parties.

WHEREAS, the City agrees to grant to the MTD a license to maintain its existing Bus Shelters and to install new Bus Shelters on portions of City Right-of-Way, subject to the conditions set forth herein and in compliance with applicable regulations of the Urbana City Code and state and federal law.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the MTD and the City hereby agree as follows:

Article 1. Definitions.

- 1.1 Agreement** means this Bus Shelter Master License Agreement made and entered into the date that it is fully executed by the parties.
- 1.2 Bus Shelter** means a pad and shelter located and installed on a portion of City Right-of-Way.
- 1.3 City** means the City of Urbana, Illinois, a home rule municipal corporation.
- 1.4 Code** means the Urbana City Code, as amended.
- 1.5 GIS** means Geographical Information System. GIS is a system designed to capture, store, manipulate, analyze, manage, and present all types of geographical data.
- 1.6 MTD** means the Champaign-Urbana Mass Transit District, a municipal corporation of the State of Illinois, situated in Champaign County, Illinois.
- 1.7 Right-of-Way** means the portion of the street, sidewalk and parkway owned and controlled by the City for public purposes.
- 1.8 Site Maps** means the documents depicting the locations of Bus Shelters.
- 1.9 Site Plans** means the design and construction plans to construct and install Bus Shelters.

Article 2. Responsibilities of the City.

- 2.1 Grant of License.** The City grants to the MTD a nonexclusive license to construct, install, maintain, and remove Bus Shelters located in the sections of Right-of-Way depicted in the Site Maps attached hereto as **Exhibits A1** and **A2**. Existing locations are depicted in **Exhibit A1**. New proposed locations are depicted and described in **Exhibit A2**. Additional Bus Shelters may be approved by execution of written amendments to this Agreement (including additional Site Maps and Site Plans) signed by the Managing Director of the MTD (or designee) and the City's mayor. The rights granted to the MTD shall be subordinate to the City's use of the Right-of-Way.
- 2.2 Effective Date; Term; Amendments.** This Agreement shall be effective upon the date it is fully executed. The term of this Agreement shall be for a period of 20 years from the effective date and shall automatically renew for additional 5-year terms subject to the right of either party to terminate the Agreement with 60 days' written notice pursuant to the Right of Termination provisions of Section 6.1 herein. This Agreement may be amended from time to time by written agreement of the parties.

Article 3. Responsibilities of the MTD.

- 3.1 Construction of Bus Shelters.** The MTD agrees to construct, install and maintain Bus Shelters in a manner consistent with the Site Plans and in compliance with applicable regulations of the Code and state and federal law. Site Plans shall be approved by the City's Public Works Director (or designee) and attached hereto as **Exhibits B1** and **B2**. Existing bus shelters are represented by a template **Site Plan** attached hereto as **Exhibit B1**. New proposed bus shelters are depicted in **Exhibit B2**. All design, construction, installation, maintenance, repair, and removal activity shall be at the MTD's sole cost and expense, unless subject to a cost share agreement.
- 3.2 Construction of New Sidewalks.** Each new Bus Shelter must be accessible by a public sidewalk. If no such sidewalk exists at the location of a proposed Bus Shelter, the MTD shall construct, at its sole expense, a sidewalk extending for the entire length of the block on the same side of the street on which the Bus Shelter is installed. The MTD shall build the sidewalk in accordance with the City's infrastructure standards. Upon inspection and written approval by the Public Works Director or designee, the City will own and maintain the sidewalk.
- 3.3 Maintenance of Right-of-Way and Bus Shelter.** The MTD shall maintain the Right-of-Way and Bus Shelters depicted in the Site Map and Site Plans in a good and operating condition, free from accumulation of snow, ice, and debris. All maintenance, repair, replacement, and removal required under this Agreement will be performed in a timely and skillful manner and at the sole cost and expense of the MTD. Nothing in this Agreement shall obligate the City to notify the MTD of the need for maintenance, repairs, or replacement prior to the MTD's completion of any maintenance, repairs, or replacement in and around the specified Right-of-Way and Bus Shelters.

- 3.4 Plan and Map Submission.** Not later than 60 days after the effective date of this Agreement, the MTD shall provide the City with maps showing the locations of all existing Bus Shelters located in Right-of-Way as of the effective date of this Agreement, in an electronic format compatible with the City's GIS software. Upon completion of construction of new Bus Shelters in Right-of-Way, the MTD shall provide the City with updated maps showing the new locations in an electronic format compatible with the City's GIS software and as-built Site Plans for all new Bus Shelters. Site Plans must be in Adobe PDF electronic format.
- 3.5 Removal or Relocation.** In the event that the City determines, in its sole discretion, that it is necessary to remove or relocate a Bus Shelter for the construction, repair, maintenance, or installation of any City utilities or improvements in or upon the Right-of-Way, or if the Right-of-Way is no longer suitable as a bus route, the MTD shall be required to do so at its sole cost within 60 days of written notification of same. This Section shall survive termination of this Agreement.
- 3.6 Fees.** The City shall waive any Right-of-Way license or permit fees for Bus Shelters for the term of this Agreement.
- 3.7 Right-of-Way Bond.** The City shall waive the requirement of a Right-of-Way bond as otherwise required under the Code.
- 3.8 Insurance.** The MTD shall maintain insurance in the amounts and types as required by the Code. The "City of Urbana, its officers and employees" shall be included as additional insureds.
- 3.9 Assignment; Transfer.** The license granted under this Agreement may not be assigned or transferred.

Article 4. Indemnification.

- 4.1. MTD Indemnification of City.** The MTD will defend, indemnify and hold harmless the City, its officers, employees, and agents from and against all claims, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and costs) that are sustained by the City in connection with any damages arising from this Agreement, including but not limited to loss of life, personal injury, or property damage, arising from the exercise of the rights granted herein, except to the extent caused by the gross negligence or willful misconduct of the City, or its contractors, agents, licensees or employees. This Section shall survive termination of this Agreement. In connection with any indemnification hereunder, the City will tender to the MTD the defense of any claim made against the City that is subject to indemnification hereunder in sufficient time to avoid prejudice to the MTD, for handling by counsel of the City's selection and reasonably acceptable to the MTD. Notwithstanding the foregoing, the MTD retains all defenses and immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*, as amended.
- 4.2 City Indemnification of MTD.** The City will defend, indemnify and hold harmless the MTD from and against all claims, damages, liabilities and expenses (including, without

limitation, reasonable attorneys' fees and costs) that are sustained by the MTD in connection with any damages arising from the exercise of the rights granted herein, except to the extent caused by the gross negligence or willful misconduct of the MTD, or its contractors, agents, licensees or employees. In connection with any indemnification hereunder, the MTD will tender to the City the defense of any claim made against the MTD that is subject to indemnification hereunder in sufficient time to avoid prejudice to the City, for handling by counsel of the MTD's selection and reasonably acceptable to the City. Notwithstanding the foregoing, the City retains all defenses and immunities provided by the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*, as amended.

Article 5. Default and Remedies.

- 5.1. Breach or Default.** Unless otherwise provided herein, in the event of a breach/default of this Agreement by a party, such breaching/defaulting party shall, upon written notice from the other party, cure or remedy such breach/default immediately. In the event the breaching/defaulting party has not cured the breach/default or made a good faith effort to do so within 30 calendar days of said notice, the aggrieved party may institute such proceedings as it deems necessary to cure and remedy such breach/default. Under no circumstances shall the MTD or a third party be entitled to damages in the form of specific performance, punitive damages, reliance, expectation, compensatory, or any other damages incurred or related to this Agreement. Uncured default by either party to this Agreement shall entitle the aggrieved party reasonable attorneys' fees, costs, and related expenses directly incurred due the breach/default of this Agreement. If the MTD does not cure a breach/default as provided in this section, the City immediately may revoke the license granted in this Agreement.
- 5.2. Cumulative Remedies.** The rights and remedies of the parties to this Agreement shall be cumulative of each other and of rights and remedies under other provisions of applicable regulations of the Code and state and federal law. Exercise of one or more rights or remedies shall not waive or bar exercise of any other, unless expressly waived in writing.

Article 6. Termination.

- 6.1. Right of Termination.** Each party has the right to terminate this Agreement upon 60 days' prior written notice to the other party.
- A. Rescission.** Upon termination of this Agreement by either party, the grant of benefits to the MTD shall be rescinded pursuant to this Agreement.
- B. Removal and Restoration.** Upon termination of this Agreement for any reason, the MTD, at its sole expense, shall remove and dispose of the Bus Shelters and restore the Right-of-Way to at least as good a condition as it was existing prior to the use of the Right-of-Way by the MTD. If the MTD fails to do so, the City may remove and dispose of the Bus Shelters and restore the Right-of-Way at the MTD's expense. If the MTD fails in any way to make timely payment to the City for the removal and restoration costs, the



MTD shall pay, in addition to any amount so owed, the City's reasonable attorneys' fees and court costs incurred in the collection of such amount. This Section shall survive termination of this Agreement.

Article 7. General Conditions.

- 7.1. **Applicable Laws.** Except as otherwise provided herein, this Agreement shall not be construed to weaken the applicability of any laws, resolutions, or ordinances to the MTD. The parties agree that any claims arising directly or indirectly from this Agreement shall be litigated in accordance with the laws of the State of Illinois in the Champaign County Circuit Court.
- 7.2. **Severability.** If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render any other provision invalid if it can be given effect without the invalid provision.
- 7.3. **Merger.** This Agreement contains all the terms and conditions relating to the agreements of the parties, and no oral representations, covenants or agreements existing between the parties other than those herein stated.
- 7.4. **Time.** The parties agree that time is of the essence to the performance by said parties of the terms and conditions of this Agreement.
- 7.5. **Dispute Resolution.** In the event a dispute arises regarding the interpretation of the provisions of this Agreement, or breach thereof, the parties shall make a good faith effort to resolve such dispute. If the parties are unable to resolve the dispute, and either party's claim exceeds \$10,000, then within 60 days from when written notice of such dispute was sent the parties shall submit the dispute to mediation. The selection of the mediator and the mediation process shall be governed by the rules of the Uniform Mediation Act, 710 ILCS 35/1, *et seq.* Each party shall bear its own costs, including half of the costs invoiced by the mediator.
- 7.6. **Notice.** Any written notice under this Agreement shall be sent and be effective the day of mailing via certified mail, or upon personal service to the following parties as designated:

For the City:	Public Works Director City of Urbana 706 S. Glover Avenue Urbana, Illinois 61802-4427
For MTD:	Managing Director Champaign-Urbana Mass Transit District 1101 East University Avenue Urbana, Illinois 61802

IN WITNESS WHEREOF, the City and the MTD have caused this Agreement to be executed by the parties as of the dates written below.

Champaign-Urbana Mass Transit District	City of Urbana
By:  Managing Director	By: _____ Diane Wolfe Marlin, Mayor
Date: <u>12/18/2018</u>	Date: _____
Approved as to form:  MTD Attorney	Attest: _____ Charles A. Smyth, City Clerk Ordinance No.

j:\leg\word\mtd\bus shelter agreements\mtd urbana master bus shelter agreement 11-13-18.doc

LIST OF EXHIBITS

EXHIBITS

- A1. Site Map for Existing Locations**
- A2. Site Maps for New Proposed Locations**
- B1. Site Plans for Existing Locations**
- B2. Site Plans for New Proposed Locations**

Exhibit A1a - Urbana MTD Shelters

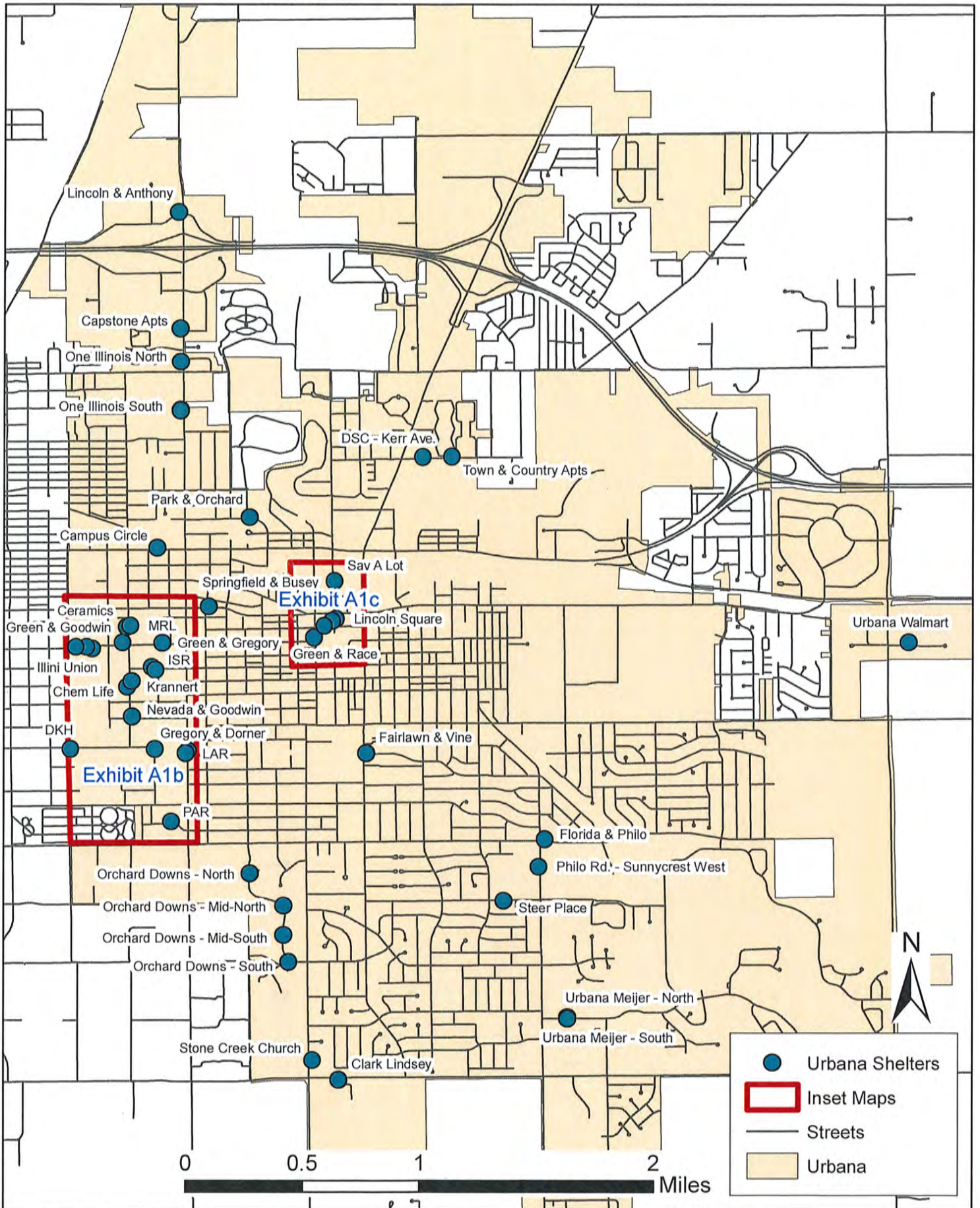


Exhibit A1b - Urbana Campus MTD Shelters

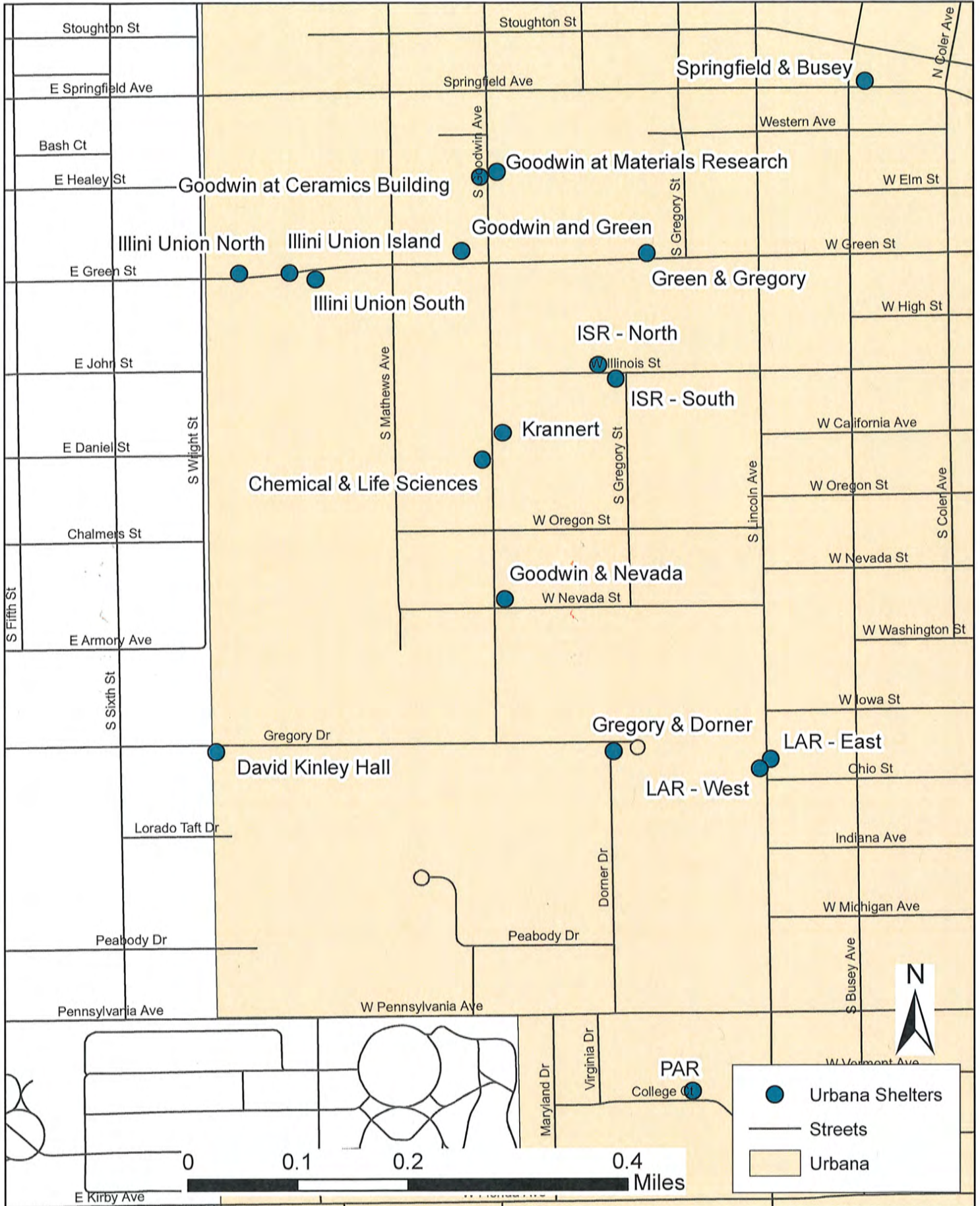


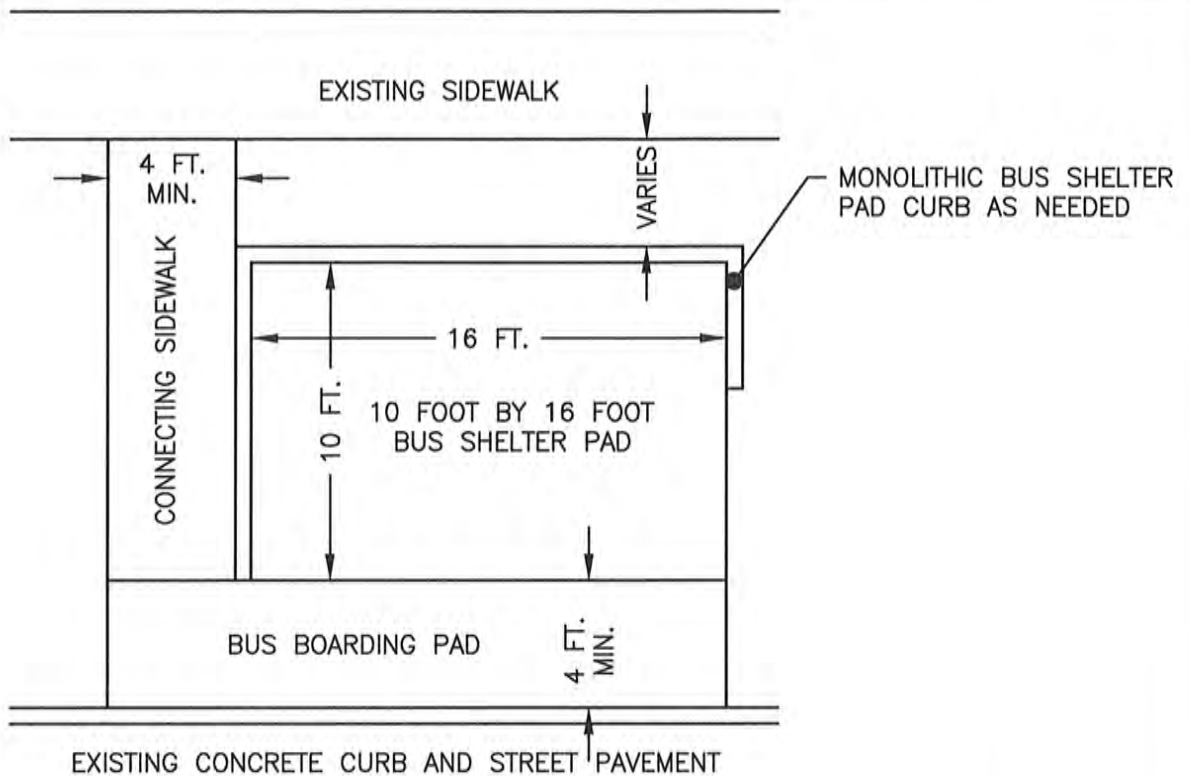
Exhibit A1c - Downtown Urbana MTD Shelters



EXHIBIT A2
Site Map for New Proposed Locations

Will be attached at the Time of Future Addendum

Exhibit B1



NOTES:

1. BUS SHELTER PAD AND BUS BOARDING PAD SHALL BE CONSTRUCTED WITH A MAXIMUM SLOPE OF 1.5% IN ANY DIRECTION.
2. BUS BOARDING PAD SHALL MATCH EXISTING/PROPOSED TOP OF CURB ELEVATION AND SLOPE.
3. CONNECTING SIDEWALK SHALL BE CONSTRUCTED WITH 1.5% MAXIMUM CROSS SLOPE AND 4.5% LONGITUDINAL SLOPE WITH A TOLERANCE OF 0.5%.
4. IF CONNECTING SIDEWALK LONGITUDINAL SLOPE EXCEEDS 4.95% THE EXISTING SIDEWALK SHALL BE REMOVED AND REPLACED AS NEEDED TO PROVIDE A MAXIMUM 4.5% LONGITUDINAL SLOPE OR THE ALIGNMENT AND LENGTH OF THE CONNECTING SIDEWALK SHALL BE ADJUSTED TO PROVIDE MAXIMUM 4.5% LONGITUDINAL SLOPE.
5. NEW CONCRETE SHALL BE MINIMUM 6 INCH THICKNESS WITH 4 INCH THICKNESS CA6 AGGREGATE BASE.

TYPICAL BUS SHELTER DETAIL



BERNS, CLANCY AND ASSOCIATES
ENGINEERS • SURVEYORS • PLANNERS
405 EAST MAIN STREET - POST OFFICE BOX 755
URBANA, ILLINOIS 61803-0755
PHONE: (217) 384-1144 - FAX: (217) 384-3355

SHEET 1 OF 1

DATE: 102518

JOB: 5534-12

EXHIBIT B2
Site Plans for New Proposed Locations

Will be attached at the Time of Future Addendum

EXHIBIT C
Insurance Certificate